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No. 83-264

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

CALVIN W. BURNETT,
PRESIDENT OF COPPIN STATE COLLEGE;
J. CARSON DOWELL; EDMUND C. MESTER: AND
RONALD K. DESOUZA,
VICE PRESIDENT OF STUDENT AFFAIRS, COPPIN STATE COLLEGE,
Petitioners,

v.

JAMES R. GRATTAN AND ADRIENNE S. HEDMAN,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF OF RESPONDENTS

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STATUTES AND REGULATIONS

With the exception of the statutes identified below, which are set forth at Appendix A-1 through A-25, Petitioners' Brief and Petition for Certiorari identify the statutory provisions discussed in Respondents' Brief:

ARTICLE 41, ANNOTATED CODE OF MARYLAND, § 255

ARTICLE 49B, ANNOTATED CODE OF MARYLAND, § 11

ARTICLE 64A, ANNOTATED CODE OF MARYLAND, § 53

CODE OF MARYLAND REGULATIONS (COMAR) 14.03.01.02, 14.03.01.03 and 14.03.01.07

STATEMENT OF THE CASE

Petitioners have presented the facts of the case in their Brief and Petition for Certiorari. For the purposes of this Brief, Respondents accept the facts, but

not the arguments, contained in those presentations.

SUMMARY OF ARGUMENT

I. The Fourth Circuit correctly applied the limitations period identified in Courts Article, § 5-101. Petitioners' characterization of Article 49B and Article 64A as the most nearly analogous proceedings to a civil rights claim in federal court ignores the differences in the statutory schemes established by those statutes. The analogy also distorts the purpose underlying the limitations periods applied to those procedures. Petitioners focus only on the time in which a complainant must file a grievance with an agency designed to assist aggrieved persons in formulating

their complaint, explore possibilities for settlement or conciliation and, if such conciliation is unavailing, draft a formal complaint. The Maryland legislature accorded the administrative agency three years to complete that process. A similar period of time should be allotted to complainants filing formal complaints in federal court.

II. The three-year limitations period is also consistent with state and federal interests. The three-year period enhances the possibility for settlement and thereby encourages prompt resolution of disputes. It fosters the federal goals of deterrence and compensation without displacing the state system for resolving employment discrimination disputes. The three-year period no less

than the six-month period provides a time certain in which claims must be brought and thus protects potential defendants from unending litigation over stale claims. Finally, the three-year period, unlike the six-month period, is consistent with principles of federalism because it does not frustrate the interests of one forum in favor of the interests another.

ARGUMENT

I. THE FOURTH CIRCUIT CORRECTLY DETERMINED THAT MARYLAND'S RESIDUARY STATUTE IS APPLICABLE TO RESPONDENTS' SECTION 1981 CLAIMS

It is well established that an action arising under the federal civil rights laws (42 U.S.C. §§ 1981 et seq.) is governed by the statute of limitations that applies to the analogous state cause

of action.1/ The authority to borrow a state statute of limitations is not boundless, however. Congress has instructed the courts to extend the law of the state only "so far as the same is not inconsistent with the Constitution and the laws of the United States." 42 U.S.C. § 1988. See also Board of Regents of University of New York v. Tomanio, 446 U.S. 478, 483-85 (1980); Robertson v. Wegmann, 436 U.S. 584, 590 (1978); Johnson v. Railway Express Agency, Inc., 421 U.S. 454, 465 (1975).

1/ In determining the appropriate statute of limitations, it is unnecessary to distinguish between the different causes of action embodied in the Reconstruction civil rights statutes. See also Pet. Br. at 17 n.10.

Selection of the appropriate limitations period requires identification of the state substantive statute most closely analogous to the federal action, a matter decided according to federal law. Robertson v. Wegmann, 436 U.S. at 590. During the course of these proceedings, Petitioners have identified at least six analogous state statutes. At present, Petitioners have narrowed their focus to two statutes: Article 49B, providing access to Maryland's Commission on Human Relations ("MCHR"); and Article 64A, enacting a state employee grievance procedure. Neither procedure is sufficiently analogous to a claim brought in court alleging violations of the federal civil rights laws. The Court of Appeals thus correctly adopted the statute of

limitations most closely analogous to proceedings brought under 42 U.S.C. § 1981 -- Maryland's residuary statute, Courts Article, § 5-101.

A. The Administrative Procedure Established By Article 49B Is Not Analogous To Civil Rights Claims Under 42 U.S.C. § 1981

Article 49B is not analogous to § 1981; it is Maryland's counterpart to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq. Like Title VII, Article 49B establishes "an integrated multistep enforcement procedure" which, after conciliation efforts, substantial investigation and an evidentiary hearing, culminates in the MCHR's authority to issue judicially enforceable cease and desist orders. See Occidental Life Insurance Co. v. EEOC,

432 U.S. 355, 359 (1977); Art. 49B, §§ 10, 11 and 12. And like Title VII, under the administrative regulations of the MCHR, an employee must file a grievance within six months of an alleged discriminatory practice. Art. 49B, § 9(a). That "complaint" triggers an investigative process, not litigation.2/ Within 120 days, the MCHR must serve a copy of the administrative complaint on the

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2/ See Pet. Br. at 16. Petitioners mischaracterize the six-month limitations period in Title VII for filing administrative grievances as the time in which an action must be brought to court. It is not. In Occidental Life Ins. Co. v. EEOC, 432 U.S. 355, 366 (1977), this Court specifically held that there is no time limitation upon the EEOC's power to file suit.

respondent. COMAR 14.03.01.02.F(1).3/ The MCHR then has at least two years to investigate the grievance and to attempt to reach conciliation. COMAR 14.03.01.-03.A.4/ If the MCHR staff finds there is

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3/ The Maryland Court of Appeals has recognized that this administrative complaint, served pursuant to COMAR 14.03.01.02.F(1), is not required to conform to the more exacting pleading requirements applicable to judicial proceedings. Banach v. State Commission of Human Relations, 277 Md. 502, 513 (1976); Equitable Trust v. State of Maryland Commission on Human Relations, 42 Md. App. 53, 60-62, 399 A.2d 908 (1979), reversed on other grounds, 287 Md. 80, 411 A.2d 86 (1980).

4/ The two-year period may be extended if the respondent delays the investigation or if, upon a motion to dismiss the complaint, the Executive Director of the MCHR finds that respondent has not been unduly prejudiced by the failure to complete an investigation within two years. COMAR 14.03.01.03.A.

there is probable cause to believe the respondent has committed a discriminatory employment practice -- and it has been unsuccessful in conciliatory efforts -- the MCHR may bring formal charges against the respondent. At this point, the respondent is put on notice of the claims in a complaint which details the particulars of the charges against it. Banach v. State Commission on Human Relations, 277 Md. 502, 513, 356 A.2d 242 (1976). The respondent must then answer the complaint and defend itself at a formal evidentiary hearing. Art. 49B, § 11. The administrative procedure set forth in Article 49B thus contemplates nearly three years (assuming no extensions of time) of investigation and conciliation

before the adjudicatory stage of the process begins.

The analogy Petitioners draw between the state administrative process and the federal judicial scheme ignores the fundamental and practical differences in the role the complainant plays. Contrary to Petitioners' assertion, under Article 49B, the complainant initiates the administrative process merely by filing a grievance.5/ See McNutt v. Duke

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5/ Petitioners blatantly mischaracterize the employee's role in the administrative scheme. Pet. Br. at 26. Although COMAR 14.03.01.07.H(1) permits a complainant to be present and represented by counsel for examination and cross-examination of witnesses and to introduce evidence at a formal MCHR hearing, the general counsel of MCHR presents the employee's case. Art. 49B, § 11(a). The

(Footnote continued on next page.)

Precision Dental & Orthodontic Laboratories, Inc., 698 F.2d 676, 678 (4th Cir. 1983). He or she need not be schooled in

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5/ (Footnote continued from previous page.)

employee does not control the theory of the case or the development of evidence. Nor can an employee compel a probable cause finding (the prerequisite for a formal hearing) under Article 49B, § 10. Further, an employee ordinarily has no right to appeal a denial of a request for reconsideration upon a finding of no probable cause because in most employment discrimination cases, including this one, the EEOC has subject matter jurisdiction over such complaints. Art. 49B, § 10(d). In addition, the only judicial review of an adverse final agency decision available to an employee is the appellate review mandated by the Maryland Administrative Procedure Act, Art. 41, § 244 et seq.; Soley v. State Commission on Human Relations, 277 Md. 521, 356 A.2d 254, 257 (1976). If the final Commission decision were in favor of the employee, he would have only a discretionary right to intervene in judicial

(Footnoted continued on next page.)

the law. Nor is the respondent expected to answer the complainant's grievance. Banach, supra, 277 Md. at 514-515. It is only at the end of the administrative process that the MCHR has made reasonable inquiry, and can issue a complaint well

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5/ (Footnote continued from previous page.)

proceedings. Art. 41, § 255(a). Finally, Petitioners cite no authority for their assertion that an employee can join in a request for temporary injunctive relief if terminated. The case law under § 706(f)(2) of Title VII is divided on the point. Compare, for example, Berg v. Richmond Unified School District, 528 F.2d 1208 (9th Cir.), vacated and remanded on other grounds, 434 U.S. 158 (1975), with, Fields v. Village of Skokie, 502 F. Supp. 456 at 459 (N.D. Ill. 1980). There is less reason to imply such a private right of action in the Article 49B context than in a Title VII case, because unlike Title VII, there is no general private right of action under Article 49B.

grounded in fact, and based on its reasonable belief or information that a violation has occurred. Cf. Rule 11, Fed. R. Civ. P. It is only at the end of the administrative process that a formal MCHR complaint which accords with the traditional notions of fair play and notice will issue.

In contrast, to initiate suit under § 1981, the federal rules require that a complaint giving notice to the defendant issue at the beginning of the judicial process. The federal rules contemplate that before a pleading is filed, the complainant make reasonable inquiry and that the complaint be well grounded in fact and based on the party's best information and belief. Rule 11, Fed. R. Civ. P. Indeed, penalties may be imposed

against litigants who pursue poorly researched or frivolous claims. See Christiansburg Garment Co. v. EEOC, 434 U.S. 412, 421 (1978). Thus the judicial scheme makes significant demands upon complainants before they come to Court.

More appropriately, the analogy should be drawn between the complainant's role in bringing a suit under § 1981 and the MCHR's role under § 49B. In the § 1981 action, the employee cannot simply file a grievance comparable to that in the administrative scheme. He or she, like the MCHR, must recognize a deprivation, investigate and assess the merits of the claim, flesh out the particulars and draft a formal notice of the allegations that comports with the federal

rules of civil procedure. See Rules 8, 11 and 12, Fed. R. Civ. P. Unlike the MCHR, however, an employee filing a federal claim must overcome the psychological or emotional hardship of having been discharged, perhaps find new employment and, if he or she desires a lawyer, have the time and the means to retain one. The § 1981 complainant, therefore, should have at least the three years granted the MCHR to prepare his or her case.

Federal courts comparing administrative proceedings similar to Article 49B and judicial proceedings have roundly rejected any analogy between the two proceedings. For example, in Waters v. Wisconsin Steel Works, 427 F.2d 476 (7th Cir.), cert. denied, 449 U.S. 911 (1970),

the court declined to analogize the Illinois Fair Labor Practices Act (FEPA) procedures to § 1981 in selecting a statute of limitations to apply to the federal action. Unlike § 1981, and like Article 49B, the FEPA placed the entire burden of investigating and developing a case upon the State Commission, relieving the complainant there, as here, of the time-consuming and costly tasks of investigation and preparation of a claim. 427 F.2d at 488. Moreover, the Seventh Circuit reasoned, as did the Fourth Circuit below,6/ that the primary purpose served

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6/ In McNutt v. Duke Precision Dental & Orthodontic Laboratories, Inc., 698 F.2d 676, 678-79 (4th Cir. 1983), the court found significant to its decision that

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by the administrative process was to encourage conciliation and private settlement. Id. In contrast, the court concluded that where judicial relief is sought, "conciliation has generally failed." Id.

The Eighth Circuit reasoned similarly reasoning in Chambers v. Omaha Public School District, 536 F.2d 222, 225-27 (8th Cir. 1976). In that case, the

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6/ (Footnote contined from previous page.)

Article 49B, § 10(b) specifically provides that the administrative proceeding is designed to "eliminate the discrimination by conference, conciliation, and persuasion." As such, the court ruled that the statutory mechanism could not be analogous to § 1981 in which there is no conciliation scheme or purpose. Id. The court below relied on its decision in McNutt and adopted the reasoning of that case.

court found that the state administrative procedures were not analogous to federal judicial schemes raising and resolving fair housing claims. The court distinguished the fair housing statute which governed judicial actions from the fair employment rule which applied to the time within which to initiate administrative claims. Id. at 226. Although providing identical time periods, the rules of limitations governed statutory schemes endowed with different purposes and operating mechanisms. Id. The Eighth Circuit declined to analogize the different administrative and judicial schemes. Instead, it applied Nebraska's statute of limitations for actions asserting liability under a federal statute -- a three-year limitations period. Id. at 228.

Accord: Mason v. Owens-Illinois, Inc., 517 F.2d 520, 522 (6th Cir. 1975); Zuniga v. AMFAC Foods, Inc., 580 F.2d 380, 384 n.5 (10th Cir. 1978).

Even Petitioners' own analysis leads to the conclusion that the judicial scheme of § 1981 and the administrative mechanism of Article 49B are far from analogous. Petitioners urge adoption of the state statute of limitations that state courts of Maryland would apply to federal civil rights actions had the claims been brought in state court. Pet. Br. at 17-19. 7/ They argue that the

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7/ The petitioners contend that adoption of the limitations period governing the state administrative procedures of

(Footnote continued on next page.)

precursor to Article 49B, an action for mandamus, would afford a comparable remedy. Pet. Br. at 21-24. 8/ Yet this ignores Petitioners' own recognition that mandamus is no longer available. Br. at

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7/ (Footnote continued from previous page.)

Art. 49B would "advanc[e] the goals of federalism." Pet. Br. at 32. To the contrary, no better example of federalism can be imagined than abiding by the judgment of the highest court of Maryland, as the Fourth Circuit has done below and in McNutt, in finding that the procedures embodied in Art. 49B § 9(a) are largely administrative in nature. See Banach, 277 Md. at 514-15, 356 A.2d at 250-51.

8/ Petitioners' reliance on Duffey v. Rickard, 194 Md. 228, 71 A.2d 41 (1950) is similarly misplaced. Apart from the significant factual distinctions that can be made, Duffey was a laches case wholly inapposite to the statute of limitations choice facing this Court. No universal rule limiting public employee discharge actions was announced in that opinion.

7. The relief authorized by the federal civil rights statutes is largely legal, not equitable in nature. An action for mandamus is not analogous to a § 1983 action. See Pauk v. Board of Trustees of the City University of New York, 654 F.2d 856, 863 (2d Cir. 1981), cert. denied, 455 U.S. 1000 (1982). Were Respondents to have brought suit in state court, the analogous proceeding at the state level would be a cause of action under the Maryland Declaration of Rights. In Davidson v. Koerber, 454 F. Supp. 1256 (D. Md. 1978), the court analyzed precisely this question and determined that under such circumstances a civil action under the Maryland Declaration of Rights would be subject to the limitations

period specified in § 5-101. As the court noted:

> This conclusion is compelled by . . . the purpose of the 1974 Code Revision. In that Revision, a "blanket three-year provision" was substituted for the former statute's "'laundry list' of actions" because many of the actions are obscure, because some state statutory actions might not be provided for, and because the general three year provision in the former statute was intended to cover "all causes of actions" subject to certain exceptions and needed updating for some modern common law torts. Md. Cts. & Jud. Proc. Code Ann. § 5-101, Revisor's Note (1974). Although Revisor's Notes are not law, . . . they are strong and persuasive evidence of the legislative intent.

454 F. Supp. at 1260. Accord: Lewis v. Clark, 534 F. Supp. 714, 717 (D. Md. 1982); Parish v. Maryland & Virginia Milk Producers Assn., 437 F. Supp. 623 (D. Md. 1977).

The holdings of the First Circuit do not diminish the fundamental dissimilarity of judicial and administrative schemes. For example, in Burns v. Sullivan, 619 F.2d 99 (1st Cir.), cert. denied, 449 U.S. 893 (1980), the court was asked to select the limitations period to govern actions brought pursuant to §§ 1983 and 1985 of the Civil Rights Act of 1870. Although the court selected a statute which governed administrative proceedings, the statute selected also provided for judicial action by the employee. See Mass. Gen. Laws. Ann., ch. 151B, § 6; Burns, 619 F.2d at 103. The statute selected by the Burns Court appropriately governs state judicial proceedings.

B. The Statutory Scheme For Internal Grievances Governed by Article 64A Is Not Analogous To An Action Under 42 U.S.C. § 198 § 1981

In their Petition for Writ of Certiorari, Petitioners argue that Md. Code, Art. 64A is also analogous to suits brought under § 1981. Cert. Pet. at 9, 13. By that argument, Petitioners advocate at least three separate statutes of limitations for § 1981 depending on whether the complainant was a public or private employee or an employee at all.

Article 64A, the scheme governing internal grievances for state employees, is not analogous to § 1981. The scheme established in Article 64A more aptly can be described as establishing a schedule for processing a grievance rather than a limitations period for filing the

grievance. Most of the time limits contained in the merit system grievance procedures are not limitations upon the employee. Rather, they are limitations on the state's ability to delay the processing of a grievance. See, e.g., Art. 64A, § 53. Similar limitations upon the employer's ability to delay processing a grievance are contained in Art. 64A, § 54.9/

9/ Moreover, the state statutory scheme for challenging the illegal discharge of public classified employees is wholly irrelevant to a determination of the most analogous state statute of limitations in this case because these mechanisms were simply unavailable to Respondents. Article 64A, § 53(c)(13), Anno. Code of Md., clearly excepts Respondents from the state employee grievance procedure. Petitioners have conceded this point. Pet. Br. at 8, 12. It would be anamolous

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II. THE MARYLAND RESIDUARY STATUTE IS FULLY CONSISTENT WITH THE CONSTITUTION AND THE LAWS OF THE UNITED STATES

Any assessment of the consistency of the federal action and the state timeliness rule must consider whether the state law would undermine the purposes for which the federal action exists. Robertson v. Wegmann, 436 U.S. 584, 590

9/ (Footnote continued from previous page.)

indeed if the assertion of federally guaranteed rights turned upon time limitations under a state statutory scheme which was not even available under state law to the two Respondents in this case or to private employees. See Delaware State College v. Ricks, 449 U.S. 250 (1980). This Court has made clear that federal courts -- not state administrative agencies -- have the pre-eminent role in enforcing federal rights under § 1983. Patsy v. Board of Regents of Florida, 457 U.S. 496 (1982).

(1978); Johnson v. Railway Express Agency, Inc., 421 U.S. at 465. Resort to state law to govern the timing of federal actions should be the rule in the first instance where Congress has failed to furnish a limitations period. DelCostello v. International Brotherhood of Teamsters, ___ U.S. ___, 103 S.Ct. 2281, 2294. Where no state law evinces consistency with the policies underlying the federal action and where strong federal interests apply, this Court has looked to federal law for guidance. See DelCostello, 103 S.Ct. at 2293-94; Occidental Life Insurance Co. v. EEOC, 423 U.S. 355, 367 (1977).

Faced with the dissimilarity of judicial and administrative schemes and the

inapplicability of state grievance procedures to the case at bar, the Court's attention must focus on whether adoption of Maryland's residuary statute, governing civil actions, would be consistent with the laws of the United States and the Constitution. 42 U.S.C. § 1988; DelCostello, 103 S.Ct. at 2291-92 (1983); Auto Workers v. Hoosier Corp., 383 U.S. 696, 706-07 (1966).

A. Resort to a Six-Month Limitations Period Contravenes the Remedial Purpose of Federal Civil Rights Actions and Unduly Restricts Their Reach

It is beyond dispute that § 1981, like the other federal civil rights laws, was passed to achieve broad remedial purposes through compensation of victims of discrimination and deterrence against future similar acts. See Board of

Regents v. Tomanio, 446 U.S. at 488; Johnson v. Railway Express Agency, Inc., 421 U.S. at 459. The administrative procedures established in Title VII and Article 49B were designed to foster conciliation and settlement short of litigation. On the other hand, § 1981 assumes that conciliation is unavailable and thus judicial intervention is warranted. Johnson, 421 U.S. at 459, 471. Litigants under § 1981 act as private attorneys general to "prohibit all racial discrimination." See Runyon v. McCrary, 427 U.S. 160, 170 (1976).

Ultimately, the length of the limitations period must be judged according to the "practicalities of litigation" it will govern. Humphrey v. Moore, 375 U.S. 335, 358 (1964) (Goldberg, J., concurring

in result); McAllister v. Magnolia Petroleum Co., 357 U.S. 221, 224 (1958). Where the state limitations period is so short that it would "significantly restrict the types of actions that survive," then it is inconsistent with federal policies and must not be adopted. See Robertson v. Wegmann, 436 U.S. at 594.

The length of the state statute of limitations, perhaps more than any other characteristic of a timeliness provision, must be examined for its consistency with the remedial goals of the federal action. Repeatedly, this Court has judged the consistency of state limitations statutes according to the length of the period. In DelCostello, 103 S.Ct. at 2291, for example, the Court declined to adopt a

particular limitations period within which to seek vacation of arbitration awards because the period was too short "to provide an aggrieved employee with a satisfactory opportunity to vindicate his rights" under § 301 of the Labor Management Relations Act. Similarly, in Delaware State College v. Ricks, 449 U.S. 250 (1980), this Court considered at what point a statute of limitations should start running under Title VII and § 1981. Regardless of the triggering event adopted, the Court noted it was important that the limitations period "should not commence to run so soon that it becomes difficult for a layman to invoke the protection of the civil rights statutes." Id. at 262 n.16.

The collective experience of the federal courts has led this Court and five other circuit courts to recognize that statutes, remedial in purpose and unlikely to be understood by laypeople, such as § 1981, must be governed by limitations period long enough for the provisions to be accessible to the uninitiated.10/ In Knoll v. Springfield

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10/ See DelCostello, 103 S.Ct. at 2291; Shouse v. Pierce County, 559 F.2d 1142, 1146 (9th Cir. 1977) (per curiam) (limitations rule must be "sufficiently generous in the time periods to preserve the remedial spirit of federal civil rights action"); Childers v. Independent School District, 676 F.2d 1338, 1343 (10th Cir. 1982) (court rejects a 120-day limitations period as "inconsistent with the broad remedial purposes of the Federal civil rights acts"); McNutt v. Duke Precision Dental & Orthodontic Laboratories, Inc., 698 F.2d 676, 678 (4th Cir. 1983).

Township School District, 699 F.2d 137, 142 (3d Cir. 1983), cert. pending, for example, the court concluded that a six month period of limitations was too short for "the average plaintiff . . . not sufficiently conversant with the intricacies and subtleties of constitutional law to recognize the [injury], consult a lawyer, and prepare a case for filing in court. . . ."11/ Similarly, in

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11/ In his statement in support of rehearing en banc in Knoll, Judge Adams questioned whether Rule 15, Fed. R. Civ. P., permitting liberal amendment of complaints, lessened the burden on plaintiffs who, faced with a short limitations period, must hurredly file unpolished complaints. 699 F.2d at 147 n.2. Where amendment procedures are construed liberally, the disadvantage suffered by lay plaintiffs is lessened. But liberal amendment procedures only address part

(Footnote continued on next page.)

Pauk v. Board of Trustees of City University of New York, 654 F.2d 856, 862 (2d Cir. 1981), cert. denied, 455 U.S. 1000 (1982), the court affirmed the trial court's adoption of a three-year limitations period to govern § 1983 actions, finding it of sufficient length to be

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11/ (Footnote continued from previous page.)

of the problem. Short limitations period force hasty and, perhaps, incomplete investigation of claims. In addition, plaintiffs risk the imposition of harsh penalities for unknowingly pursuing frivolous claims. See Christiansburg Garment Co. v. EEOC, 434 U.S. at 421. Further, premature complaints bloat an already crowded federal docket. See Meyers v. Pennypack Woods Home Ownership Assn., 559 F.2d 894, 903 n.26 (3d Cir. 1977); see also Address on State of the Judiciary by Warren E. Burger, Chief Justice of the United States to the ABA, February 12, 1984, at 13-15.

consistent with the "broad remedial purposes" of the statute.12/

The experience of the federal courts, therefore, suggests that the Maryland residuary statute, providing a three-year period, is not too short to defeat the remedial purposes of § 1981. Equally clear, the collective experience of the federal courts would find, as did the Fourth Circuit below, that a

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12/ In reaching its decision, Pauk rejects a time period of one year and 90 days, reasoning that any period shorter than two years will create an inequity between the liability exposure of the state government and analogous exposure of the federal government under the Federal Tort Claims Act. 654 F.2d at 862. See 28 U.S.C. §§ 1346(b) and 2680(h). See also Owen v. City of Independence, 445 U.S. 622 (1980); Picariello v. Fenton, 491 F. Supp. 1020 (M.D. Pa. 1982). Such parity is desirable.

six-month period is so short as to jeopardize the rights of the complainants whose interests the statute is designed to protect.13/

Petitioners argue, however, that countervailing federal interests compel adoption of the shorter limitations period. Pet. Br. at 20, 28-32. Petitioners cite the federal policy favoring "the relatively rapid resolution of labor

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13/ The First Circuit stands alone in its concern that a federal limitations period in excess of the state administrative period would defeat the state administrative mechanisms. See Burns v. Sullivan, 619 F.2d at 107. The court cites no evidence to support its fear that the administrative mechanism would become obsolete. Indeed, the personal and monetary costs of litigation ensure that the administrative mechanism will remain an appealing forum in which to proceed.

disputes," Pet. Br. at 20. In support of their claim, they rely on DelCostello and United Parcel Service, Inc. v. Mitchell, 451 U.S. 56 (1981). Their reliance is misplaced.

In DelCostello, the Court was asked to determine what statute of limitations applies to suits against a union, alleging breaches of the collective bargaining agreement and the duty of fair representation. After considering a variety of state statutes, the Court adopted a federal statute, § 10(b) of the National Labor Relations Act, which governs the filing of unfair labor practice charges. 103 S.Ct. at 2293. Petitioners make much of the Court's recognition that the "relatively rapid final resolution of labor disputes [is] favored by federal

law. . . ." Id. at 2293. See Pet. Br. at 20, 25. This federal interest, however, is not undermined by a statute of limitations longer than six months. As the Court noted in DelCostello, and has noted elsewhere,14/ the peculiar nature of collective bargaining grievance machinery requires prompt and informal resolution of disputes. Far from judicial proceedings, the labor dispute resolution mechanisms the Court considered are akin to the conciliation process embodied in Title VII and Article 49B which, because of their informality and emphasis on settlements, warrant a shorter limitations period.

14/ See Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574, 581 (1960).

Similarly, in Mitchell, this Court was faced with the question of which of two state statutes should govern an action brought under § 301(a) of the Labor Management Relations Act, alleging that the union breached its duty of fair representation and that the employer improperly discharged him. The Court characterized the action as, in essence, a suit to vacate an arbitration award, id. at 1563, and recognized there, as it later did in DelCostello, that the consensual relationship inherent in industrial self-government favored prompt resolution of disputes. Again, Petitioners rely on this policy to support their request for adoption of the six-month limitations period in Article 49B. Pet. Br. at 20. But the analogy more aptly

drawn is between the industrial dispute resolution process and Title VII or Article 49B, not § 1981.15/

B. Application of Maryland's Residuary Statute Preserves State Policies Favoring Timely Resolution of Employment Disputes and Affording Protection From Unfounded Lawsuits

Section 5-101 not only furthers federal civil rights policies but its three-year limitations period supports the state policies identified by Petitioners. In fact, a three-year limitations period

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15/ Unlike Mitchell and DelCostello, UAW v. Hoosier Corp., 383 U.S. 696 (1966) did not implicate the federal labor policies requiring the adoption of limitation periods as short six months. Instead, Hoosier Corp. involved a suit for breach of collective bargaining agreement, a simple damage claim for which, like the present case, a longer statute of limitations was adopted. 383 U.S. at 705-706.

is more consistent with the state's interest than a six-month period.

First, the three-year limitations period strengthens the public policy generally underlying limitations periods by ensuring a well-ordered judicial system. Although restricting the time period for filing claims could reduce the number of lawsuits filed, that decrease might be offset by an increase in the filing of premature or hastily drafted complaints. See Burns v. Sullivan, 619 F.2d 99, 106 (1st Cir.), cert. denied, 449 U.S. 893 (1980); Meyers v. Pennypack Woods Home Ownership Assn., 559 F.2d 894, 903 n.26 (3d Cir. 1977); Cf. Crown, Cork & Seal Co., Inc. v. Parker, ___ U.S. ___, 103 S.Ct. 2392, 2397 (1983) (where this Court, based on the same reasoning,

upheld the tolling of the applicable statute of limitations for a Title VII action by the filing of a class action). Cluttering the courts with hastily drafted complaints only embroils the courts in protracted proceedings relating to the sufficiency of the complaints and the scope of discovery.

Second, the three-year limitations period, no less than the six-month period, protects the reliability of the fact-finding process by setting a time certain in which claims must be filed. Strict rules of evidence guard against Petitioner's fear that "stale" evidence will impugn the accuracy or reliability of the fact-finding process. There is no indication that other Maryland statutes of limitations specifying that actions must

be brought within three years have posed unreasonable evidentiary problems.16/ Nor have Petitioners cited any reason why a § 1981 claim poses exceptional problems. On the contrary, § 1981 claims typically depend heavily on documentary proof, the accuracy or reliability of which will not diminish with the passage of time. See Meyers v. Pennypack Woods

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16/ Maryland has enacted several statutes of limitations in addition to § 5-101 that specify that actions must be brought within three years. See e.g., Courts Art., § 5-106(g) and (h); Art. 27, § 230A (prosecution for welfare and Medicaid fraud); Courts Art., § 3-904(g) (action for wrongful death); Art. 101, § 58 (cases where Workmen's Compensation claim involved); Courts Art., § 5-111; Art. 16, § 5C (contempt-of-court action for default on court-ordered spousal or child support); and Art. 100, §§ 55-D (claim under Maryland's Equal Pay for Equal Work Act).

Home Ownership Assn., 559 F.2d at 903 n.26.

Third, by affording an opportunity for informal dispute resolution before litigation, § 5-101 also fosters the state's interest in the prompt assertion and resolution of employment disputes by public employees without depriving an employee of judicial review. See Johnson v. Railway Express Agency, Inc., 421 U.S. at 461 (where this Court recognized that litigation chills conciliation and settlement.) If an employee pursues internal or administrative grievance procedures, as provided in Articles 49B and 64A, the process would take at least six months. By that time, the limitations period urged by Petitioners will have run. As a result, the three-year limitations period

of § 5-101 encourages informal conciliatory efforts and thereby encourages the very conduct that will achieve the quickest assertion and resolution of employment disputes. At the same time, it preserves the long-standing and pervasive view shared by states as well as the federal government that private or informal settlements are to be encouraged and that plaintiffs should resort to litigation and the courts only when that process fails. See UAW v. Hoosier Corp., 383 U.S. 696, 701 (1966); Occidental Life Ins. Co. v. EEOC, 432 U.S. 355 (1977).

Petitioners overlook the fact that employees perhaps more than employers or the state have a keen interest in the prompt resolution of employment disputes.

Most aggrieved employees are eager to secure the relief they seek and set behind them the unfortunate or unpleasant events giving rise to their claims. In addition, contrary to the fears expressed by the First Circuit in Burns, a three-year limitations period would promote use of state administrative conciliation procedures before employees make the commitment of resources, time and emotion that litigation demands. A six-month limitations period frustrates both state and federal interests because it forces an employee to chose one process over the other or burden both.

Further, use of the three-year period of repose will not deprive defendants of certainty with respect to when or whether an action may be filed against

them. To the extent that potential plaintiffs have a claim, they may file grievances with the EEOC or with the Maryland Commission on Human Relations. Thus, in many instances, the defendants will have been alerted to the possibility of an action against them and, accordingly, will have ample opportunity to gather and preserve evidence should litigation follow. See Occidental Life Ins. Co. v. EEOC, 432 U.S. at 372. In the instant case, defendants were put on notice promptly of the claims against Coppin State College and the individuals

involved. See Pet. Br. at 8. This is hardly a case of unfair surprise.17/

Even if plaintiffs do not choose to exercise their administrative remedies, § 5-101 still affords public officers reasonable protection against unfounded or stale lawsuits. Section 5-101 reflects the policy determination of the Maryland legislature that three years constitutes an adequate period of time for a person of ordinary diligence to pursue a claim and still protects defendants against

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17/ Petitioners' argument at pp. 38-39 of their Brief grossly mischaracterizes the issues raised by Respondents' complaint. Reference to acts prior to 1975 were alleged to show a pattern or practice of discrimination. The court below accepted this position, see Grattan v. Burnett, 710 F.2d 160, 163 (4th Cir. 1983), and Petitioners do not challenge this finding.

stale or unfounded actions. Hariq v. Johns-Manville Products Corp., 284 Md. 70, 394 A.2d 299, 302 (Md. App. 1978). Maryland's Equal Pay for Equal Work Act, Md. Ann. Code, Art. 100, §§ 55A-D (where a private right of action for an aggrieved employee affords potential litigants three years in which to bring their complaints). Cf. Knoll v. Springfield Township School District, 699 F.2d 137, 142 (3d Cir. 1983) (where court held that the average plaintiff is not sufficiently conversant with complexities of constitutional law to recognize the deprivation, consult a lawyer and prepare and file a case within six months), and Pauk v. Board of Trustees of City Univ. of New York, 654 F.2d 856, 862 (2d Cir. 1981) (where court held that limitations

period applicable to § 1983 suit should be no less than two years).

To the extent the state has an interest in insulating its public employers from liability under § 1981, this is not the appropriate forum for such a decision. The Maryland legislature and the courts already have defined the immunity to which Petitioners are entitled. See e.g., Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). As the Second Circuit has stated, "[i]t would be anamolous for a federal court to apply a state policy restricting remedies against public officials to a federal statute that is designed to augment remedies against those officials. . . ." Pauk v. Board of Trustees, 654 F.2d at 862. Thus, Petitioners' attempt to seek

additional insulation from liability by restricting the ability of victims to protect their rights is inappropriate.

The application of the longer statute of limitations also is consistent with at least 38 other federal courts which have applied time limitations exceeding six months in civil rights actions. Although Petitioners' Petition for Writ of Certiorari represents that at least 30 states have established abbreviated periods for filing administrative claims of employment discrimination, Cert. Pet. at 10 and n.7, federal courts confronted with § 1983 or § 1981 charges have not applied those abbreviated periods to such claims. See Appendix at A-11 through A-25 for statutes of limitations applied

by federal courts of various states.18/ Although this Court has recognized that it is not essential that statutes of limitations governing federal civil

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18/ Respondent has found reported decisions only from federal courts in Massachusetts, Nebraska and Maryland applying a six-month limitations period. And in each of those three states, there are conflicting decisions. Compare Chambers v. Omaha Public School District, 536 F.2d 222 (8th Cir. 1976) (three-year statute) with Warren v. Norman Realty Co., 513 F.2d 730 (8th Cir. 1975) (180 days) (Nebraska); Compare Ware v. Colonial Provision Co., Inc., 458 F. Supp. 1193 (D. Mass. 1978) (2 years) with Burns v. Sullivan, 619 F.2d 99 (1st Cir.), cert. denied, 449 U.S. 893 (1980) (6 months) (Massachusetts). The court in Burns did not overturn the district court's finding in Ware; it found the opinion inconclusive. 619 F.2d at 106. Compare McNutt v. Duke Precision Dental and Orthodontic Labs, Inc., 698 F.2d 676 (4th Cir. 1983) (3 years) with McGill v. General Electric Co., 524 F. Supp. 1126 (D. Md. 1981); reversed in part on other grounds, 685 F.2d 430 (4th Cir. 1982) (6 months) (Maryland).

rights claims be nationally uniform, see, e.g., UAW v. Hoosier Corp., 383 U.S. at 702-04 (1966), no state has settled on a period of less than one year for civil rights actions.19/ This period is twice as long as the limitations period Petitioners argue should be applied to federal civil rights cases.

III. EVEN IF ARTICLE 49B, § 9(a), IS THE MOST ANALOGOUS STATUTE OF LIMITATIONS, THE COURT SHOULD NEVERTHELESS AFFIRM THE DECISION OF THE COURT BELOW

This claim was filed on October 13, 1981. At that time, the United States

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19/ See cases cited in n.16, supra. Because the civil rights statutes protect constitutionally secured rights, an unduly short limitations period may so impair the protection of those rights as to be constitutionally infirm. The reluctance of federal courts to adopt

(Footnote continued on next page.)

District Court for the District of Maryland uniformly applied a three-year statute of limitations to claims of employment discrimination under 42 U.S.C. §§ 1981, 1983. See, e.g., McIver v. Russell, 264 F. Supp. 22 (D. Md. 1967); Hall v. Asher, 355 F. Supp. 808, 811 n.6 (D. Md. 1973); Linder v. Litton Systems, Inc., 81 F.R.D. 14, 17 (D. Md. 1978); Lewis v. Bethlehem Steel Corp., 440 F. Supp. 949, 953 (D. Md. 1977); Parish v. Maryland and Virginia Milk Producers Association, 437 F. Supp. 623, 627 (D. Md. 1977). See also Harper v. Mayor and

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19/ (Footnote continued from previous page.)

limitations periods of less than one year sets a standard according to which state statutes may be selected consistent with federal policy.

City Council of Baltimore, 359 F. Supp. 1187, 1195 n.12 (D. Md.), modified on other grounds sub nom. Harper v. Kloster, 486 F.2d 1134 (4th Cir. 1973). In addition, a panel of the Fourth Circuit had cited the three-year period as the statute of limitations applicable to employment discrimination suits under 42 U.S.C. § 1981, in a decision decided prior to October 31, 1981. See International Woodworkers, Local 5346 v. Chesapeake Bay Plywood Corp., 659 F.2d 1259, 1271 (4th Cir. 1981). Respondents relied on this unbroken line of precedent. Thus it was error for the district court to diverge from settled precedent and apply its new holding retrospectively. Chevron Oil Company v. Huson, 404 U.S. 97 (1971). Therefore, even if this Court

were to hold that Art. 49B, § 9(a) is the appropriate statute of limitations, the decision of the Fourth Circuit nevertheless must be affirmed.

CONCLUSION

For the reasons set forth above, Respondents respectfully request that the decision of the Court of Appeals be affirmed.

Respectfully submitted,

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APPENDIX

APPENDIX

ARTICLE 41. ANNOTATED CODE OF MARYLAND

§ 255. Same -- Judicial Review.

(a) Right to review. -- Any party aggrieved by a final decision in a contested case, whether such decision is affirmative or negative in form, is entitled judicial review thereof under this subtitle.

(b) Where proceedings instituted; intervening parties. -- Proceedings for review shall be instituted in the circuit court of the county either where any party resides or has his or its principal place of business. The court, in its discretion may permit other interested persons to intervene.

(c) Stay of enforcement of decision. -- The filing of the petition does not itself stay enforcement of the agency decision. Except as otherwise provided by law, the agency may grant, or the reviewing court may order, a stay upon appropriate terms.

(d) Additional evidence. -- If, before the date set for hearing, application is made to the court for leave to present additional evidence on the issues

in the case, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon such conditions as the court deems proper. If additional evidence is taken before the agency, it may modify its findings and decision by reason of the additional evidence and shall file with the reviewing court, to become a part of the record, the additional evidence, together with any modifications or new findings or decision.

(e) Hearing without a jury; testimony, oral argument and written briefs. -- The review shall be conducted by the court without a jury. In cases of alleged irregularities in procedure before the agency, not shown in the record, testimony thereon may be taken in the court. The court shall, upon request, hear oral argument and receive written briefs.

(f) Affirmance, remand, reversal or modification of decision. -- The court may affirm the decision of the agency or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the administrative findings,

inferences, conclusions, or decisions are:

(1) In violation of constitutional provisions; or

(2) In excess of the statutory authority or jurisdiction of the agency; or

(3) Made upon unlawful procedure; or

(4) Affected by other error of law; or

(5) Unsupported by competent, material, and substantial evidence in view of the entire record as submitted; or

(6) Arbitrary or capricious. (1957, ch. 94; 1962, ch. 36, §§ 1, 26; 1978, ch. 884; 1982, ch. 820, § 1.)

ARTICLE 44B, ANNOTATED CODE OF MARYLAND

§ 11. Hearing.

(a) Certification of file; notice to respondent; place of hearing; transcript; duty of Commission's counsel.-- In case of failure to reach an agreement

for the elimination of the acts of discrimination and upon the entry of findings to that effect, the entire file including the complaint and any and all findings made shall be certified to. The chairman shall cause a written notice to be issued and served in the name of the Commission together with a copy of the complaint requiring the respondent to answer the charges of the complaint at a public hearing before a hearing examiner at a time and place certified in the notice.

The case shall thereupon be heard by a hearing examiner and the hearing shall be held in the county where the alleged act of discrimination took place. A transcript of all testimony at the hearing shall be made. The case in support of the complaint shall be presented at the hearing by the general counsel of the Commission.

(b) Answer and appearance of respondent; right to submit testimony and examine witnesses. -- The respondent may file a written answer to the complaint and appear at the hearing in person, or otherwise, with or without counsel. The respondent may submit testimony and shall be fully heard. He may examine and cross-examine witnesses.

(c) Amendment of complaint or answer; testimony to be under oath and recorded. -- The Commission may permit

reasonable amendment to be made to any complaint or answer. Testimony taken at the hearing shall be under oath and recorded.

(d) Power of Commission to administer oaths, etc.; subpoenas. -- In the administration and enforcement of the provisions of these several subtitles, the Commission has power to administer oaths and to issue subpoenas, to compel the attendance and testimony of witnesses and the production of books, papers, records and documents relevant or necessary for proceedings under the particular subtitle. Any such subpoena shall be served by the sheriff or deputy sheriff of the political subdivision in which is located the residence of the person or the main office of the firm, association, partnership or corporation against whom or which the subpoena is issued. In case of disobedience to a subpoena, the Commission may apply to a circuit court in any county or to a court of appropriate jurisdiction in the Supreme Bench of Baltimore City for an order requiring the attendance and testimony of witnesses and the production of books, papers, records, and documents. In case of contumacy or refusal to obey a subpoena for the attendance of a witness or the production of books, papers, records, and documents, after notice to the person subpoenaed as a witness or directed to produce books, papers, records and documents, and upon a finding that the attendance and testimony

of the witness or the production of the books, papers, records and documents is relevant or necessary for the proceedings of the Commission, the court may issue an order requiring the attendance and testimony of the witness and the production of the books, papers, records and documents. Any failure to obey such an order of the court may be punished by the court as a contempt thereof.

(e) Cease and desist order; relief. -- If upon all the evidence, the hearing examiner finds that the respondent has engaged in any discriminatory act within the scope of any of these subtitles, the hearing examiner shall so state the findings. The hearing examiner shall issue and cause to be served upon the respondent an order requiring the respondent to cease and desist from the discriminatory acts and to take affirmative action to effectuate the purposes of the particular subtitle. If the respondent is found to have engaged in or to be engaging in an unlawful employment practice charged in the complaint, the remedy may include, but is not limited to, reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief that is deemed appropriate. The award of monetary relief shall be limited to a two-year period, except that such two-year

period shall not apply to losses incurred between the time of the Commission's final determination and the final determination by the circuit court or higher appellate court, as the case may be. Interim earning or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the monetary relief otherwise allowable. In cases of discrimination other than those involving employment nonmonetary relief may be granted to the complainant.

(f) Monetary relief limited to complaints filed after July 1, 1977. -- The provisions of subsection (e) granting the authority to award monetary relief to a complainant shall apply only to those complaints filed with the Commission on or after July 1, 1977.

(g) Order dismissing complaint. -- If upon all the evidence, the hearing examiner or the Commission finds that the respondent has not engaged in any alleged discriminatory act within the scope of the particular subtitle, it shall state its findings of fact and shall similarly issue and file an order dismissing the complaint. (1963, ch. 228, § 1; 1964, ch. 67; 1969, ch. 153; 1972, ch. 408, § 1; 1977, ch. 937; 1978, ch. 684, § 2.)

ARTICLE 64A, ANNOTATED CODE OF MARYLAND

§ 53. Employees Authorized to Present Grievances; representation; exceptions.

(a) Any employee classified or unclassified, of the executive branch of the State government, unless excepted by subsection (c) of this section, may present any grievance which he may have, in accordance with the provisions of this subtitle free from interference, coercion, restraint, discrimination or reprisal.

(b) Any employee authorized to present a grievance may be represented at any stage of the grievance procedure by any person or persons of his choice.

(c) The following persons are excepted from the provisions of this subtitle:

(1) Persons appointed by the Governor or whose appointment requires gubernatorial approval;

(2) Deputy Attorneys General and assistant Attorneys General, and all attorneys on the staff of the Attorney General including counsel to the principal departments of the executive branch of the State government;

(3) The chief deputy comptroller, and the chief deputy treasurer;

(4) Persons who are subject to collective bargaining agreements containing other grievance procedures;

(5) Persons who are subject to contracts, rules or regulations concerning teacher tenure, including employees on a faculty staff;

(6) Student employees;

(7) Patients and inmates in State institutions;

(8) Police officers of the Maryland State Police;

(9) The State Public Defender, the deputy public defender, district public defenders and assistant public defenders;

(10) Elected State officials;

(11) Employees of the Department of Personnel for whom the Secretary shall provide an alternative procedure similar to the procedure prescribed by this subtitle;

(12) Classified employees of the University of Maryland for whom

a grievance procedure exists in § 7 of the University of Maryland publication known as "Personnel Practices for Classified Employees" except as modified by Title 13, Subtitle 1 of the Education Article;

(13) Persons in unclassified positions at the various State universities and colleges which are comparable to positions on the associate staff of the University of Maryland, provided that the respective boards of trustees of the various State universities and colleges undertake a review of such positions for the purpose of:

(i) Determining which positions should be classified and promptly classifying them; and

(ii) Determining as to the rest what changes are appropriate to be made to the grievance procedure applicable to the faculty staff, in light of the grievance procedure adopted by this subtitle;

(14) Persons holding positions on the associate staff of the University of Maryland, provided that the president of the university undertakes a review of such positions for the purpose of:

(i) Determining which positions should be classified and promptly classifying them; and

(ii) Determining as to the rest what changes are appropriate to be made to the grievance procedure applicable to the faculty staff, in light of the grievance procedure adopted by this subtitle. (1977, ch. 727; 1978, ch. 537, § 2.)

COMAR 14.03.01.02.F

F. Notice

(1) After the authorization of an individual complaint by the Executive Director, as set forth in § E, above, and not more than 120 days from the date on which this complaint was filed, the Commission staff shall provide notice of it by serving a copy of the complaint upon respondent.

(2) If timely notice is not made in accordance with § F(1), above, the respondent may, within 30 days from the date of receipt of the complaint, file a motion to dismiss the complaint, supported by a written memorandum. The Executive Director shall consider the motion

without oral argument and either grant or deny the same after considering among other factors whether respondent was unduly prejudiced by the lack of timely notice. Notice of the Executive Director's decision shall be given to the complainant and respondent.

COMAR 14.03.01.03.A

A. Investigation.

Upon the authorization of a complaint, the Executive Director or his designee shall assign, or cause to be assigned, the investigation of the complaint to a staff investigator who shall endeavor to gather promptly all information necessary and relevant to the making of a fair determination of the alleged discrimination. Any such investigation (except those undertaken pursuant to Regulations .09A and .09B, below) shall conclude with a written finding, as hereinafter provided, within two years from the date on which notice of the complaint is forwarded to the respondent; provided, however, that no such time limitation may apply to those cases in which any respondent to a complaint has refused or failed to comply voluntarily with Commission requests for information, in a timely fashion or to those cases in which respondent has instituted any

proceedings (except those set forth in Regulations .03C(3), .04 and .04C), which result in the delay of an investigation. Written findings may not be required for any complaint which is disposed of under Regulations .02H above, or .04, below. If an investigation is not completed in accordance with the provisions of this section, the respondent may file a motion to dismiss the complaint. The motion shall be supported by a memorandum of fact and law setting forth therein the reasons why the respondent is requesting dismissal of the complaint. The Executive Director shall consider this motion and shall grant or deny this motion after considering, among other factors, whether the respondent has been unduly prejudiced by the failure to complete this investigation within the time specified in this section. Notice of the Executive Director's decision shall be provided to all parties.

COMAR 14.03.01.07.H

H. Conduct of Hearing.

(1) The complainant and the respondent shall have the right to be represented by counsel, to be present, and to participate. The right to participate shall include the right to examine

and cross-examine witnesses, and to introduce evidence into the hearing.

(2) All hearings shall be conducted by a hearing examiner in accordance with these regulations.

(3) All hearings once commenced shall continue on successive workdays until completed, unless the hearing examiner rules otherwise.

(4) All hearings shall be open to the public.

(5) A complete record of the proceedings shall be made.

TABLE

STATE LAW INTERPRETED	STATUTE OF LIMITATIONS APPLICABLE	AUTHORITY
AL	1 yr.	Ingram v. Steven Robert Corp., 547 F.2d 1260 (5th Cir. 1977); Womack v. Shell Chemical Co., 514 F. Supp. 1062 (S.D. Ala. 1981)
AK		No cases reported
AZ	1 yr.	Tyler v. Reynolds Metals Co., 600 F.2d 232 (9th Cir. 1979)
AR	3 yrs.	Martin v. Georgia-Pacific Corp., 568 F.2d 58 (8th Cir. 1977)

CA	3 yrs.	Wiltshire v. Standard Oil Co. of California, 652 F.2d 837 (9th Cir. 1981)
CO	6 yrs.	Zuniga v. AMFAC Foods, Inc., 580 F.2d 380 (10th Cir. 1978)
CT	3 yrs.	Williams v. Walsh, 558 F.2d 667 (2d Cir. 1977)
DE	3 yrs.	Goldsmith v. E. I. DuPont, 32 FEP Cases 1879 (D. Del. 1983); Trader v. Fiat Distributors, Inc., 476 F. Supp. 1194 (D. Del. 1979)

FL	2 yrs.	Caldwell v. Martin Marietta Corp., 632 F.2d 1184 (5th Cir. 1980)
GA	2 yrs.	Persons v. United Parcel Service, Inc., 502 F. Supp. 1176 (N.D. Ga. 1980)
HI		No cases reported
ID	3 yrs.	Gowin v. Altmiller, 455 F. Supp. 743 (D. Idaho 1978)
IL	5 yrs.	Perkins v. Hendrickson Manufacturing Co., 610 F.2d 469 (7th Cir. 1979)

IN	2 yrs.	Movement for Opportunity and Equality v. General Motors Corp., 622 F.2d 1235 (7th Cir. 1980)
IA	5 yrs.	Tatum v. Golden, 570 F.2d 753 (8th Cir.), cert. denied, 436 U.S. 960 (1978)
KS	3 yrs.	Burns v. Union Pac. R.R., 564 F.2d 20 (8th Cir. 1977)
KY	1 yr.	Hines v. Board of Education, 492 F. Supp. 469 (E.D. Ky. 1980), aff'd, 667 F.2d 564 (6th Cir. 1982)

LA	1 yr.	Page v. U.S. Industries, Inc., 556 F.2d 346, (5th Cir. 1977), cert. denied, 434 U.S. 1045 (1978); Adams v. Jefferson Davis Parish School Board, 450 F. Supp. 1141 (W.D. La. 1978)
ME	2 yrs.	Curran v. Portland Superintending School Committee, 435 F. Supp. 1063 (D. Me. 1977)
MD	3 yrs./ 6 mos.	McNutt v. Duke Precision Dental and Orthodontic Laboratories, Inc., 698 F.2d 676 (4th Cir. 1983) (3 yrs.); McGill v. General Electric Co., 524 F. Supp. 1126 (D. Md. 1981) (6 mos.)

MA	2 yrs./ 6 mos.	Ware v. Colonial Provision Co., Inc., 458 F. Supp. 1193 (D. Mass. 1978) (2 yrs.); Burns v. Sullivan, 619 F.2d 99 (1st Cir.), cert. denied, 449 U.S. 893 (1980) (6 mos.)
MI	3 yrs.	Richards v. I.B.M. Corp., 504 F. Supp. 1369 (E.D. Mich. 1981)
MN	2 yrs.	Morrey v. Independent School District 2 FEP Cases 974 (D. Minn. 1969)
MS	6 yrs.	Truvillion v. King's Daughters Hospital, 614 F.2d 520 (5th Cir. 1980)

MO	5 yrs.	Allen v. Amalagamated Transit Union Local 788, 554 F.2d 876 (8th Cir.) cert. denied, 434 U.S. 891 (1977)
MT	2 yrs.	Strung v. Anderson, 452 F.2d 632 (9th Cir. 1971); Swan v. Matthews, 555 F. Supp. 495 (D. Mont. 1982)
NE	3 yrs./ 6 mos.	Chambers v. Omaha Public School District, 536 F.2d 222 (8th Cir. 1976); Metcalf v. Omaha Steel Castings Co., 476 F. Supp. 870 (D. Neb. 1979) (3 yrs); Warren v. Norman Realty Co., 513 F.2d 730 (8th Cir. 1975) (6 mos.)

NV		No cases reported
NH	90 dys./ 6 mos. or 6 yrs.*/	Dewey v. Univ. of New Hampshire, 694 F.2d 1 (1st Cir. 1982)
NJ	2 yrs.	Peltack v. Borough of Manville, 547 F. Supp. 770 (D. N.J. 1982)
NM	4 yrs.	Gunther v. Miller, 498 F. Supp. 882 (D. N.M. 1980)
NY	3 yrs.	Pauk v. Board of Trustees of City Univ. of New York, 654 F.2d 856 (2d Cir. 1981)

*/ The court did not reach the question of which of three limitations periods applied because the claim was time-barred under all of the statutes.

NC	3 yrs.	King v. Seaboard Coast Line R.R. Co., 538 F.2d 581 (4th Cir. 1976)
ND		No cases reported
PA	3 yrs.	Knoll v. Springfield Township School District, 699 F.2d 137 (3d Cir. 1983)
OH	6 yrs.	Mason v. Owens-Ill., Inc., 517 F.2d 520 (6th Cir. 1975); Balmes v. Board of Education of Cleveland, 436 F. Supp. 129 (N.D. Ohio 1977)
OK	2 yrs.	Smith v. Woodhollow Apartments, 463 F. Supp. 16 (W.D. Okla. 1978)

OR	6 yrs.	Plummer v. Western International Hotels Co., Inc., 656 F.2d 502 (9th Cir. 1981)
RI	10 yrs./ 3 yrs.	Vanlaarhoven v. Newman, 564 F. Supp. 145 (D. R.I. 1983) (10 yrs.); Partin v. St. Johnsbury Co., Inc., 447 F. Supp. 1297 (D. R.I. 1978) (3 yrs.)
SC	6 yrs.	Simmons v. South Carolina State Ports Authority, 495 F. Supp. 1239 (D.S.C. 1980)
SD		No cases reported

TN	1 yr.	Willett v. Wells, 469 F. Supp. 748 (E.D. Tenn. 1977) aff'd 595 F.2d 1227 (6th Cir. 1979)
TX	2 yrs.	Jones v. City of San Antonio, 568 F.2d 1224 (5th Cir. 1978)
UT		No cases reported
VT		No cases reported
VA	2 yrs.	Runyon v. McCrary, 427 U.S. 160 (1976)
WA	2 yrs.	No cases reported
WV	2 yrs.	McCausland v. Mason County Board of Education, 649 F.2d 278 (4th Cir. 1981)

WI	6 yrs.	Tucker v. Harley Davidson Motor Co., 454 F. Supp. 738 (E.D. Wis. 1978); Coleman v. Clark Oil and Refining Co., 568 F. Supp. 1035 (E.D. Wis. 1983)
WY	1 yr.	Courtney v. School Dist. No. 1, 371 F. Supp. 401 (D. Wyo. 1974)